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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,258	01/07/2002	Joachim Charzinski	P01,0563	8900
7590		07/07/2006	EXAMINER	
Fish & Richardson P.C.		HALIYUR, VENKATESH N		
225 Franklin Street		ART UNIT		
Boston, MA 02110-2804		PAPER NUMBER		

2616

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/030,258	Applicant(s) CHARZINSKI, JOACHIM	
	Examiner Venkatesh Haliyur	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-14. claim 4 canceled is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 4/11/2006 has been considered but is ineffective to overcome Ohba et al reference.
2. Amendments to claim 1-3,5-6 and new claims 7-14 necessitated new grounds of rejection in view of Ohba et al and Berl et al references. Please see rejections below.
3. Claims 1-14 are pending in the application. Claim 4 is cancelled and claims 7-14 are new in the amendment of 4/11/2006.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1,2,3,5,6,7,8 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohba et al. [US Pat: 6,501,760].

Regarding claim 1, Ohba disclosed in the invention of "Node device and packet transfer method using priority Information in plural hierarchical levels" a method for use in transmission of data packets (**Fig 15**), the data packets comprising packet headers that include priority information (**Fig 2**) the priority information identifying the data packets as high priority data packets or as low priority data packets (**high and low priority bit**), the method comprising: transmitting the data packets via at least one of a first transmission facility (**logical link between B1-R1 DLR:2Mbps of Fig 15**) and a second transmission facility (**logical link between B1-R1 DLR:3Mbps of Fig 15**), the second transmission facility being redundant (**plurality of DLR/ELR, col 20,lines 22-67, Fig 15**) to the first transmission facility, the data packets being transmitted in accordance with Internet Protocol (**IP, Figs 16,17**); wherein transmitting the data packets comprises: identifying which of the data packets are low priority data packets (**low priority bit value, Fig 2**) and which of the data packets are high priority data packets (**high priority bit value, Fig 2**) based on the priority information; transmitting the high priority data packets via the first transmission facility; transmitting the low priority data packets via the second transmission facility; switching transmission of the high priority data packets from the first transmission facility to the second transmission facility if there is a problem with the first transmission facility; and discarding low priority packets when high priority packets are transmitted via the second transmission facility

[Figs 1-3, Fig 15, cols 1-4, lines 1-67, col 5, lines 1-51, col 20, lines 22-67, col 21, lines 1-45].

Regarding claim 2, Ohba et al disclosed that the priority information in the TOS of at least some of the packet headers **[TOS field, Fig 16, col 1, lines 32-48, col 21, lines 24-31].**

Regarding claims 3,5 Ohba et al disclosed that the prior to switching only low priority packets are transmitted via second transmission facility (**low priority communication link**) and further disclosed that allocating high priority data packets and low priority data packets for transmission via the first and second transmission facilities (**communication links**) based on predetermined utilizations (**transmission rate**) of the first and second transmission facilities **[col 4, lines 57-67, cols 5-7, lines 1-67, col 8, lines 1-51].**

Regarding claim 6, Ohba et al disclosed that the first and second transmission facilities comprise junction lines **[links B1-E2, B1-E1 at B1, R1-B3, R1-B4 at R1 of Fig 15].**

Regarding claim 7, Ohba et al disclosed that the problem comprises a fault that affects data packet transmission via the first transmission facility (**transmission state dynamically detected through the control information exchanged between the transmission facilities**) **[col 7, lines 6-24].**

Regarding claim 8, Ohba et al. disclosed that the first and second transmission facilities are associated with first and second queues respectively (**communication resources**); and wherein the predetermined utilizations of the first and second

transmission facilities correspond to fill levels of the first and second queues, respectively **[col 7, lines 6-52]**.

6. Claims 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Berl et al [US Pat: 5,940,390].

Regarding claim 9, Berl et al disclosed in their invention of "Mechanism for conveying data prioritization information among heterogeneous nodes of a computer network" a system for use in transmission of data packets (**Figs 6-8**), the data packets comprising packet headers that include priority information (**priority identifier, item 916, Fig 9A**), the priority information identifying the data packets as high priority data packets or as low priority data packets (**Fig 7**), the system comprising: a filter to receive the data packets (**item 800, of Fig 8**), the filter being configured to identify which of the data packets are low priority data packets and which of the data packets are high priority data packets based on the priority information (**TP level**), and to output the data packets; a first queue to receive high priority data packets output by the filter (**item 778 of Fig 7**); a second queue to receive low priority data packets output by the filter (**item 772 of Fig 7**); and a switch configured (**item 725 of Fig 7**) to direct the high priority data packets from the first queue to a first transmission facility (**items 714 and 732 of Fig 7**); direct the low priority data packets from the second queue to a second transmission facility (**items 718 and 738 of Fig 7**); re-direct (**reassign the**

priority) the high priority data packets from the first queue to the second transmission facility if there is a problem with the first transmission facility; and discard low priority packets after high priority packets are re-directed to the second transmission facility **(assign default priority if there is a problem, Fig 10) [Figs 1-11, col 6, lines 22-67, col 7, lines 1-16, cols 8-9, lines 1-67, col 12, lines 1-36].**

Regarding claim 10, Berl et al disclosed that the priority information is in a TOS of at least some of the packet headers **[Fig 9A, col 11, lines 64-67, col 12, lines 1-5].**

Regarding claim 11, Berl et al. disclosed that the first and second transmission facilities comprise junction lines **(plurality of links connected between transmitter and receiver) [Figs 5-7, col 7, lines 64-67, cols 8-9, lines 1-67, col 10, lines 1-36].**

Regarding claims 12-14, Berl et al. disclosed that the problem comprises a fault that affects data packet transmission **(unrecognized data fields)** via the first transmission facility and further disclosed that the first and second queues comprise first and second buffers **(queues)**, respectively and the data packets are transmitted in accordance with Internet Protocol **(IP backbone)** **[col 9, lines 38-67, cols 10-11, lines 1-67, col 12, lines 1-36].**

Response to Arguments

7. Applicant's arguments (see remarks) filed on 04/11/2006 with respect to claims 1-3,5-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications should be directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616.

Art Unit: 2616

The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached @ (571)-272-3139. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Venkatesh Haliyur

Patent Examiner

lvw
06/16/06


RICKY Q. NGO
SUPERVISORY PATENT EXAMINER